

OPEN MEETING ITEM



0000003899

COMMISSIONERS
MARC SPITZER - Chairman
WILLIAM A. MUNDELL
JEFF HATCH-MILLER
MIKE GLEASON
KRISTIN K. MAYES

ORIGINAL



ARIZONA CORPORATION COMMISSION

22

DATE: JUNE 22, 2004

DOCKET NO: T-04200A-03-0550

TO ALL PARTIES:

RECEIVED
2004 JUN 22, P 1:31
AZ CORP COMMISSION
DOCUMENT CONTROL

Enclosed please find the recommendation of Administrative Law Judge Amanda Pope. The recommendation has been filed in the form of an Opinion and Order on:

BCE NEXXIA CORPORATION
(CC&N/FACILITIES-BASED)

Pursuant to A.A.C. R14-3-110(B), you may file exceptions to the recommendation of the Administrative Law Judge by filing an original and ten (10) copies of the exceptions with the Commission's Docket Control at the address listed below by 4:00 p.m. on or before:

JULY 1, 2004

The enclosed is NOT an order of the Commission, but a recommendation of the Administrative Law Judge to the Commissioners. Consideration of this matter has tentatively been scheduled for the Commission's Working Session and Open Meeting to be held on:

JULY 6, 2004 and JULY 7, 2004

For more information, you may contact Docket Control at (602) 542-3477 or the Hearing Division at (602) 542-4250. For information about the Open Meeting, contact the Executive Secretary's Office at (602) 542-3931.

Arizona Corporation Commission

DOCKETED

JUN 22 2004

DOCKETED BY	
-------------	--

BRIAN C. McNEIL
EXECUTIVE SECRETARY

1200 WEST WASHINGTON STREET; PHOENIX, ARIZONA 85007-2927 / 400 WEST CONGRESS STREET; TUCSON, ARIZONA 85701-1347
www.cc.state.az.us

This document is available in alternative formats by contacting Yvonne McFarlin, ADA Coordinator, voice phone number 602-542-3931, E-mail YMcFarlin@cc.state.az.us

1 **BEFORE THE ARIZONA CORPORATION COMMISSION**

2 COMMISSIONERS

3 MARC SPITZER, Chairman
4 WILLIAM A. MUNDELL
5 JEFF HATCH-MILLER
6 MIKE GLEASON
7 KRISTIN K. MAYES

8 IN THE MATTER OF THE APPLICATION OF
9 BCE NEXXIA CORPORATION FOR A
10 CERTIFICATE OF CONVENIENCE AND
11 NECESSITY TO PROVIDE FACILITIES-BASED
12 INTEREXCHANGE TELECOMMUNICATIONS
13 SERVICES IN ARIZONA AND FOR
14 COMPETITIVE CLASSIFICATION OF ITS
15 SERVICES.

DOCKET NO. T-04200A-03-0550

DECISION NO. _____

OPINION AND ORDER

11 DATE OF HEARING: April 22, 2004

12 PLACE OF HEARING: Phoenix, Arizona

13 ADMINISTRATIVE LAW JUDGE: Philip J. Dion III
14 Amanda Pope

15 APPEARANCES: Michael Patten, ROSHKA, HEYMAN AND DEWULF,
16 on behalf of BCE Nexxia Corporation; and

17 Lisa Vandenberg, Staff Attorney, Legal Division, on
18 behalf of the Utilities Division of the Arizona
19 Corporation Commission.

18 **BY THE COMMISSION:**

19 Having considered the entire record herein and being fully advised in the premises, the
20 Arizona Corporation Commission ("Commission") finds, concludes, and orders that:

21 FINDINGS OF FACT

22 1. On August 5, 2003, BCE Nexxia Corporation ("BCE" or "Applicant") filed with the
23 Commission an application for a Certificate of Convenience and Necessity ("Certificate") to provide
24 competitive facilities-based interexchange telecommunications services statewide.

25 2. BCE is a Delaware corporation, authorized to do business in Arizona. BCE is a wholly
26 owned subsidiary of Bell Canada Enterprises, Inc. which is a Canadian corporation.

27 3. On October 21, 2003, the Commission's Utilities Division Staff ("Staff") filed its Staff
28 Report, which recommended approval of the application and included a number of additional

1 recommendations.

2 4. On February 4, 2004, a Procedural Order was issued that set this matter for a hearing
3 on April 22, 2004.

4 5. On March 5, 2004, Applicant docketed a Notice of Filing of Affidavits of Publication
5 that comply with Commission rules.

6 6. On April 22, 2004, a full public hearing in this matter was held as scheduled.
7 Applicant appeared telephonically and was represented by counsel. Staff appeared and was
8 represented by counsel. The hearing was conducted before a duly authorized Administrative Law
9 Judge. Evidence was presented and testimony was taken. At the conclusion of the hearing, the
10 Administrative Law Judge took the matter under advisement and informed the parties that a
11 Recommended Opinion and Order would be prepared for the Commissioners' consideration.

12 7. On June 3, 2004, BCE filed a copy of its financial statements for 2003 as requested by
13 the Administrative Law Judge.

14 8. On June 18, 2004, Staff filed a Supplemental Staff Report in response to BCE's June
15 3, 2004 filing, which summarizes the updated financial information and concludes that such
16 information is substantially the same as that contained in BCE's original application and therefore,
17 does not warrant amendment to the recommendations contained in the Staff Report docketed October
18 21, 2003.

19 9. Applicant has the technical capability to provide the services that are proposed in its
20 application.

21 10. Currently there are several incumbent providers of interexchange services in the
22 service territory requested by Applicant, and numerous other entities have been authorized to provide
23 competitive local and interexchange services in all or portions of that territory.

24 11. It is appropriate to classify all of Applicant's authorized services as competitive.

25 12. The Staff Report stated that Applicant has no market power and the reasonableness of
26 its rates would be evaluated in a market with numerous competitors.

27 13. According to the Staff Report, BCE submitted the audited consolidated financial
28 statements of its parent, Bell Canada Enterprises, for the twelve month period ending January 31,

1 2003. These financial statements list total assets in excess of \$39 billion, total equity in excess of \$13
2 billion, and net income in excess of \$1.8 billion.

3 14. At the hearing, BCE testified that it intends to enter into interconnection agreements
4 for access facilities to be used in terminating and originating traffic to large customers for data
5 service needs. Accordingly, we will require BCE to file any interconnection agreements that must be
6 filed pursuant to the Federal Telecom Act with the Commission.

7 15. The Application states that BCE does not collect advances and deposits from its
8 customers.

9 16. Staff recommends that BCE's application for a Certificate to provide competitive
10 facilities-based interexchange telecommunications services be granted subject to the following
11 conditions:

- 12 (a) that, unless it provides services solely through the use of its own facilities,
13 Applicant be ordered to procure an Interconnection Agreement, within 365
14 days of the effective date of the Order in this matter or 30 days prior to the
15 provision of service, whichever comes first, that must remain in effect until
16 further order of the Commission, before being allowed to offer interexchange
17 exchange service;
- 18 (b) Applicant should be ordered to comply with all Commission rules, orders and
19 other requirements relevant to the provision of intrastate telecommunications
20 service;
- 21 (c) Applicant should be ordered to maintain its accounts and records as required
22 by the Commission;
- 23 (d) Applicant should be ordered to file with the Commission all financial and other
24 reports that the Commission may require, and in a form and at such times as
25 the Commission may designate;
- 26 (e) Applicant should be ordered to maintain on file with the Commission all
27 current tariffs and rates, and any service standards that the Commission may
28 require;
- (f) Applicant should be ordered to comply with the Commission's rules and
modify its tariffs to conform to these rules if it is determined that there is a
conflict between the Applicant's tariffs and the Commission's rules;
- (g) Applicant should be ordered to cooperate with Commission investigations
including, but not limited to, customer complaints;
- (h) Applicant should be ordered to participate in and contribute to a universal
service fund, as required by the Commission
- (i) Applicant should be ordered to notify the Commission immediately upon

changes to the Applicant's name, address and telephone number;

- (j) If at some future date, the Applicant wants to collect from its interexchange customers an advance, deposit, and/or prepayment, Staff recommends that the Applicant be required to file an application with the Commission for Commission approval. Such application must reference the Decision in this docket and must explain the applicant's plans for procuring a performance bond;
- (k) Applicant's intrastate interexchange service offerings should be classified as competitive pursuant to A.A.C. R14-2-1108;
- (l) The maximum rates for these services should be the maximum rates proposed by the Applicant in its proposed tariffs. The minimum rates for the Applicant's competitive services should be the Applicant's total service long run incremental costs of providing those services as set forth in A.A.C. R14-2-1109; and
- (m) In the event that Applicant states only one rate in its proposed tariff for a competitive service, the rate stated should be effective (actual) price to be charged for the service as well as the service's maximum rate;
- (n) BCE be ordered to file conforming tariffs within 365 days from the date of an Order in this matter or 30 days prior to providing service, whichever occurs first, and in accordance with the Decision; and
- (o) If any of the above timeframes are not met, that BCE's CC&N should become null and void without further Order of the Commission and no extensions for compliance should be granted.

15. Staff's recommendations, as set forth herein, are reasonable with one exception. We disagree with Staff's recommendation as set forth in Findings of Fact No. 15 (j) as we believe that the procurement of a performance bond is in the public interest and that such a requirement should not be omitted. The performance bond requirement is intended not only as a safeguard for customers of companies that collect advances, deposits or prepayments, but also provides a non-subjective and non-discriminatory means of protecting customers from the inconvenience associated with potential future insolvency of the telecommunications provider. We do not believe that a change in our current performance bond policy is necessary at this time.

16. In order to protect BCE's customers, we find that:

- (a) BCE should be ordered to procure a performance bond equal to \$100,000; and
- (b) BCE should docket proof of the performance bond within 365 days of the effective date of an Order in this matter or 30 days prior to the provision of service, whichever comes first, and must remain in effect until further Order of the Commission.

17. In its Staff Report, Staff stated that based on information obtained from the Applicant, it has determined that BCE's fair value rate base is zero, and is too small to be useful in setting rates. Staff further stated that in general, rates for competitive services are not set according to rate of return regulation, but are heavily influenced by the market. Therefore, while Staff considered the fair value rate base information submitted by the company, it did not accord that information substantial weight in its analysis.

18. The rates to be ultimately charged by BCE will be heavily influenced by the market. Because of the nature of the competitive market and other factors, a fair value analysis is not necessarily representative of the company's operations.

19. Staff stated that BCE lacks the market power to adversely affect the telecommunications market by either restricting output or raising prices. Also, Staff has recommended that BCE's services be classified as competitive and thus subject to the flexible pricing authority allowed by the Commission's Competitive Telecommunications Services rules. Staff believes that these two factors, lack of market power and the competitive marketplace for the services BCE proposes to offer, support the conclusion that a fair value analysis is not necessarily representative of the company's operations, and that the rates charged by BCE will be reasonable.

20. BCE's fair value rate base is determined to be zero for purposes of this proceeding.

CONCLUSIONS OF LAW

1. Applicant is a public service corporation within the meaning of Article XV of the Arizona Constitution and A.R.S. §§ 40-281 and 40-282.

2. The Commission has jurisdiction over Applicant and the subject matter of the application.

3. Notice of the application was given in accordance with the law.

4. A.R.S. § 40-282 allows a telecommunications company to file an application for a Certificate to provide competitive telecommunications services.

5. Pursuant to Article XV of the Arizona Constitution, as well as the Arizona Revised Statutes, it is in the public interest for Applicant to provide the telecommunications services set forth in its application.

1 IT IS FURTHER ORDERED that BCE Nexxia Corporation shall comply with all of the Staff
2 recommendations set forth in the above-stated Findings of Fact and Conclusions of Law, with the
3 exception discussed hereinabove with respect to requirements related to the future procurement of a
4 performance bond as set forth in Findings of Fact No. 15 (j).

5 IT IS FURTHER ORDERED that if BCE Nexxia Corporation fails to meet the timeframes
6 outlined in the Ordering Paragraphs above, that the Certificate of Convenience and Necessity
7 conditionally granted herein shall become null and void without further Order of the Commission.

8 IT IS FURTHER ORDERED that this Decision shall become effective immediately.

9 BY ORDER OF THE ARIZONA CORPORATION COMMISSION.
10

11 CHAIRMAN COMMISSIONER COMMISSIONER
12

13 COMMISSIONER COMMISSIONER
14

15 IN WITNESS WHEREOF, I, BRIAN C. McNEIL, Executive
16 Secretary of the Arizona Corporation Commission, have
17 hereunto set my hand and caused the official seal of the
18 Commission to be affixed at the Capitol, in the City of Phoenix,
19 this ____ day of ____, 2004.

20 BRIAN C. McNEIL
21 EXECUTIVE SECRETARY

22 DISSENT _____
23

24 DISSENT _____
25

26 AKP:mlj
27
28

1 SERVICE LIST FOR: BCE NEXXIA CORPORATION

2 DOCKET NO.: T-04200A-03-0550

3 Michael Patten
4 ROSHKA HEYMAN & DEWULF
400 E. Van Buren, Ste. 800
Phoenix, AZ 85004-2262

5 Christopher Kempley, Chief Counsel
6 Legal Division
ARIZONA CORPORATION COMMISSION
7 1200 West Washington Street
Phoenix, Arizona 85007

8 Ernest Johnson, Director
9 Utilities Division
ARIZONA CORPORATION COMMISSION
10 1200 West Washington Street
Phoenix, Arizona 85007

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28